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8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 913-A

11 **PAUL SCOTT PINKHAM**
12 **91 Southbrook Drive**
San Jose, CA 95138
13 **Civil Engineer License No. C 51104**

A C C U S A T I O N

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. David E. Brown (Complainant) brings this Accusation solely in his official capacity
19 as the Executive Officer of the Board for Professional Engineers and Land Surveyors,
20 Department of Consumer Affairs.

21 2. On or about July 16, 1993, the Board for Professional Engineers and Land Surveyors
22 issued Civil Engineer License Number C 51104 to Paul Scott Pinkham (Respondent). The Civil
23 Engineer License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on September 30, 2011, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board for Professional Engineers and Land
27 Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws.
28 All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 6775 of the Code states, in pertinent part, that "[T]he board may reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer registered under this chapter:

• • •

"(c) Who has been found guilty by the board of negligence or incompetence in his or her practice.

• • •

5. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

6. On or about March 21, 2006, Huu Tieu hired HP Inspections, Inc., Paul Scott Pinkham, (Respondent) Principal Engineer, to perform a geotechnical investigation and prepare a geotechnical report for a proposed home site located at the top of a ridge at 22596 Lago Vista Court, San Jose, California (hereinafter "Tieu project"). Respondent's proposal did not include site-specific geologic investigation and evaluation of the stability of the hillside slope on the Tieu project site, but did state that if geologic or geotechnical hazards were revealed during site exploration, additional work and expenditures may be necessary to analyze and remediate any such concerns.

On or about May 4, 2006, Respondent provided Mr. Tieu a Geotechnical Investigation Report for New Single Family Home Project. This report, in general, underscored concern of the slope affecting the proposed building site and recommended a reinforced concrete pier and grade beam foundation system for building support. Respondent's recommendations included drilled piers extending at least 12 feet below the grade beams and minimum six (6) feet into native soil. Except for considerations on seismic hazards and faulting, Respondent's report did not address geologic hazards relating to slope stability and landslides at the project site, nor did it include supplemental geologic or slope stability evaluations or recommendations for such work.

1 In response to a request from Mr. Tieu to change the foundations from a pier and grade
2 beam system to spread footings, Respondent provided Mr. Tieu with a follow up letter entitled
3 Final Foundation and Geotechnical Recommendations dated March 13, 2007. In this response,
4 Respondent re-emphasized the concerns of the slope on the project and that the steep site slopes
5 could become unstable due to water saturation, earthquake or other factors. Because of these
6 factors, Respondent asserted that the pier and grade beam foundation system was appropriate for
7 structural support for the Tieu project site. Like the initial report, this report also did not address
8 geologic hazards relating to slope stability and landslides at the project site, nor did it include
9 supplemental geologic or slope stability evaluations or recommendations for such work.

10 An official map, published by the California Geological Survey, shows areas of potential
11 hazards of slope instability and seismically-induced landslides ("blue zones") adjacent to and
12 surrounding the Tieu project site. As noted on this map, the information on the map is not
13 complete and sufficient to serve as a substitute for geologic and geotechnical site investigation.
14 Despite the fact that Respondent noted in his reports that the Tieu project site was a potential
15 landslide hazard area, Respondent did not perform any site-specific investigation to assess the
16 presence and/or risks of such hazards. Moreover, the subsurface exploration and laboratory
17 testing programs utilized by Respondent in his reports were deficient as to depth and recovery of
18 information and samples for analysis and testing. The laboratory tests did not include shear tests
19 to substantiate strength of the subsurface materials for stability evaluation.

20 **FIRST CAUSE FOR DISCIPLINE**

21 (Negligence)

22 7. Respondent is subject to disciplinary action under section 6775(c) in that Respondent
23 did not use the care ordinarily exercised in like cases by duly licensed professional engineers in
24 good standing as follows:

25 a. Respondent failed to obtain or incorporate the expertise of a licensed engineering
26 geologist in the site investigation, as set forth in paragraph 6 above.

27 b. Respondent failed to determine the presence of any slope instability hazard based on
28 field evidence, as set forth in paragraph 6 above.

1 c. Respondent failed to evaluate the stability of the slopes at the site, as set forth in
2 paragraph 6 above.

3 d. Respondent failed to provide for hazard-free residential construction, as set forth in
4 paragraph 6 above.

5 e. Respondent failed to demonstrate suitability of design recommendations for safe
6 project construction, as set forth in paragraph 6 above.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Incompetence)

9 8. Respondent is subject to disciplinary action under section 6775(c) in that Respondent
10 lacked knowledge and ability while discharging his professional obligations as follows:

11 a. Respondent failed to determine the presence of any slope instability hazard based on
12 field evidence, as set forth in paragraph 6 above.

13 b. Respondent failed to evaluate the stability of the slopes at the site, as set forth in
14 paragraph 6 above.

15 c. Respondent failed to provide for hazard-free residential construction, as set forth in
16 paragraph 6 above.

17 d. Respondent failed to demonstrate suitability of design recommendations for safe
18 project construction, as set forth in paragraph 6 above.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
21 and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a
22 decision:

23 1. Revoking or suspending Civil Engineer License Number C 51104, issued to Paul
24 Scott Pinkham;

25 2. Ordering Paul Scott Pinkham to pay the Board for Professional Engineers and Land
26 Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to
27 Business and Professions Code section 125.3;

28 ///

1 3. Taking such other and further action as deemed necessary and proper.
2

3
4 DATED:

5/28/10

Original Signed

DAVID E. BROWN

Executive Officer

Board for Professional Engineers and Land Surveyors

Department of Consumer Affairs

State of California

Complainant

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